

REFERENCE TITLE: **business expenses; unauthorized aliens**

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

## **SB 1339**

Introduced by  
Senators Pearce: Gorman, Harper; Representatives Burges, Crump,  
Montenegro, Seel, Stevens

**AN ACT**

**AMENDING SECTIONS 43-1021 AND 43-1121, ARIZONA REVISED STATUTES; RELATING TO  
INDIVIDUAL AND CORPORATE INCOME TAX ADDITIONS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 43-1021, Arizona Revised Statutes, is amended to  
3 read:

4 43-1021. Additions to Arizona gross income

5 In computing Arizona adjusted gross income, the following amounts shall  
6 be added to Arizona gross income:

7 1. A beneficiary's share of the fiduciary adjustment to the extent  
8 that the amount determined by section 43-1333 increases the beneficiary's  
9 Arizona gross income.

10 2. An amount equal to the "ordinary income portion" of a lump sum  
11 distribution that was excluded from federal adjusted gross income pursuant to  
12 section 402(d) of the internal revenue code.

13 3. The amount of interest income received on obligations of any state,  
14 territory or possession of the United States, or any political subdivision  
15 thereof, located outside the state of Arizona, reduced, for tax years  
16 beginning from and after December 31, 1996, by the amount of any interest on  
17 indebtedness and other related expenses that were incurred or continued to  
18 purchase or carry those obligations and that are not otherwise deducted or  
19 subtracted in arriving at Arizona gross income.

20 4. Annuity income received during the taxable year to the extent that  
21 the sum of the proceeds received from such annuity in all taxable years prior  
22 to and including the current taxable year exceeds the total consideration and  
23 premiums paid by the taxpayer. This paragraph applies only to those  
24 annuities with respect to which the first payment was received prior to  
25 December 31, 1978.

26 5. The excess of a partner's share of partnership taxable income  
27 required to be included under chapter 14, article 2 of this title over the  
28 income required to be reported under section 702(a)(8) of the internal  
29 revenue code.

30 6. The excess of a partner's share of partnership losses determined  
31 pursuant to section 702(a)(8) of the internal revenue code over the losses  
32 allowable under chapter 14, article 2 of this title.

33 7. The amount by which the adjusted basis of property described in  
34 this paragraph and computed pursuant to the internal revenue code exceeds the  
35 adjusted basis of such property computed pursuant to this title and the  
36 income tax act of 1954, as amended. This paragraph shall apply to all  
37 property which is held for the production of income and which is sold or  
38 otherwise disposed of during the taxable year, except depreciable property  
39 used in a trade or business.

40 8. The amount of depreciation or amortization of costs of any capital  
41 investment that is deducted pursuant to section 167 or 179 of the internal  
42 revenue code by a qualified defense contractor with respect to which an  
43 election is made to amortize pursuant to section 43-1024.

1           9. The amount of gain from the sale or other disposition of a capital  
2 investment which a qualified defense contractor has elected to amortize  
3 pursuant to section 43-1024.

4           10. Amounts withdrawn from the Arizona state retirement system, the  
5 corrections officer retirement plan, the public safety personnel retirement  
6 system, the elected officials' retirement plan or a county or city retirement  
7 plan by an employee upon termination of employment before retirement to the  
8 extent they were deducted in arriving at Arizona taxable income in any year.

9           11. That portion of the net operating loss included in federal adjusted  
10 gross income which has already been taken as a net operating loss for Arizona  
11 purposes or which is separately taken as a subtraction under the special net  
12 operating loss transition rule.

13           12. Any nonitemized amount deducted pursuant to section 170 of the  
14 internal revenue code representing contributions to an educational  
15 institution which denies admission, enrollment or board and room  
16 accommodations on the basis of race, color or ethnic background except those  
17 institutions primarily established for the education of American Indians.

18           13. The amount paid as taxes on property in this state with respect to  
19 which a credit is claimed under section 43-1078.

20           14. Amounts withdrawn from a medical savings account by the individual  
21 during the taxable year computed pursuant to section 220(f) of the internal  
22 revenue code and not included in federal adjusted gross income.

23           15. Any amount of agricultural water conservation expenses that were  
24 deducted pursuant to the internal revenue code for which a credit is claimed  
25 under section 43-1084.

26           16. The amount by which the depreciation or amortization computed under  
27 the internal revenue code with respect to property for which a credit was  
28 taken under section 43-1080 exceeds the amount of depreciation or  
29 amortization computed pursuant to the internal revenue code on the Arizona  
30 adjusted basis of the property.

31           17. The amount by which the adjusted basis computed under the internal  
32 revenue code with respect to property for which a credit was claimed under  
33 section 43-1080 and which is sold or otherwise disposed of during the taxable  
34 year exceeds the adjusted basis of the property computed under section  
35 43-1080.

36           18. The amount by which the depreciation or amortization computed under  
37 the internal revenue code with respect to property for which a credit was  
38 taken under either section 43-1081 or 43-1081.01 exceeds the amount of  
39 depreciation or amortization computed pursuant to the internal revenue code  
40 on the Arizona adjusted basis of the property.

41           19. The amount by which the adjusted basis computed under the internal  
42 revenue code with respect to property for which a credit was claimed under  
43 section 43-1074.02, 43-1081 or 43-1081.01 and which is sold or otherwise  
44 disposed of during the taxable year exceeds the adjusted basis of the

1 property computed under section 43-1074.02, 43-1081 or 43-1081.01, as  
2 applicable.

3 20. The deduction referred to in section 1341(a)(4) of the internal  
4 revenue code for restoration of a substantial amount held under a claim of  
5 right.

6 21. The amount by which a net operating loss carryover or capital loss  
7 carryover allowable pursuant to section 1341(b)(5) of the internal revenue  
8 code exceeds the net operating loss carryover or capital loss carryover  
9 allowable pursuant to section 43-1029, subsection F.

10 22. Any amount deducted pursuant to section 170 of the internal revenue  
11 code representing contributions to a school tuition organization or a public  
12 school for which a credit is claimed under section 43-1089 or 43-1089.01.

13 23. Any amount deducted in computing Arizona gross income as expenses  
14 for installing solar stub outs or electric vehicle recharge outlets in this  
15 state with respect to which a credit is claimed pursuant to section 43-1090.

16 24. Any wage expenses deducted pursuant to the internal revenue code  
17 for which a credit is claimed under section 43-1087 and representing net  
18 increases in qualified employment positions for employment of temporary  
19 assistance for needy families recipients.

20 25. Any amount deducted for conveying ownership or development rights  
21 of property to an agricultural preservation district under section 48-5702  
22 for which a credit is claimed under section 43-1081.02.

23 26. The amount of any depreciation allowance allowed pursuant to  
24 section 167(a) of the internal revenue code to the extent not previously  
25 added.

26 27. With respect to property for which an expense deduction was taken  
27 pursuant to section 179 of the internal revenue code, the amount in excess of  
28 twenty-five thousand dollars.

29 28. The amount of any deductions that are claimed in computing federal  
30 adjusted gross income representing expenses for which a credit is claimed  
31 under either section 43-1075 or 43-1075.01 or both.

32 29. The amount by which the depreciation or amortization computed under  
33 the internal revenue code with respect to property for which a credit was  
34 taken under section 43-1090.01 exceeds the amount of depreciation or  
35 amortization computed pursuant to the internal revenue code on the Arizona  
36 adjusted basis of the property.

37 30. The amount by which the adjusted basis computed under the internal  
38 revenue code with respect to property for which a credit was claimed under  
39 section 43-1090.01 and which is sold or otherwise disposed of during the  
40 taxable year exceeds the adjusted basis of the property computed under  
41 section 43-1090.01.

42 31. The amount of a nonqualified withdrawal, as defined in section  
43 15-1871, from a college savings plan established pursuant to section 529 of  
44 the internal revenue code that is made to a distributee to the extent the  
45 amount is not included in computing federal adjusted gross income, except

that the amount added under this paragraph shall not exceed the difference between the amount subtracted under section 43-1022 in prior taxable years and the amount added under THIS section ~~43-1021~~ in any prior taxable years.

32. THE AMOUNT OF ANY TRADE OR BUSINESS EXPENSE THAT IS DEDUCTED UNDER SECTION 162 OF THE INTERNAL REVENUE CODE FOR AN EMPLOYEE WHO IS AN UNAUTHORIZED ALIEN, AS DEFINED IN SECTION 23-211. THIS PARAGRAPH DOES NOT APPLY IF THE TAXPAYER VERIFIED THE EMPLOYEE PURSUANT TO SECTION 23-214, SUBSECTION A.

Sec. 2. Section 43-1121, Arizona Revised Statutes, is amended to read:

~~43-1121.~~ Additions to Arizona gross income; corporations

In computing Arizona taxable income for a corporation, the following amounts shall be added to Arizona gross income:

1. The amounts computed pursuant to section 43-1021, paragraphs 3 through 9, 12, 26 and 27.

2. The amount of dividend income received from corporations and allowed as a deduction pursuant to sections 243, 244 and 245 of the internal revenue code.

3. Taxes which are based on income paid to states, local governments or foreign governments and which were deducted in computing federal taxable income.

4. Expenses and interest relating to tax-exempt income on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the tax imposed by this title. Financial institutions, as defined in section 6-101, shall be governed by section 43-961, paragraph 2.

5. Commissions, rentals and other amounts paid or accrued to a domestic international sales corporation controlled by the payor corporation if the domestic international sales corporation is not required to report its taxable income to this state because its income is not derived from or attributable to sources within this state. If the domestic international sales corporation is subject to article 4 of this chapter, the department shall prescribe by rule the method of determining the portion of the commissions, rentals and other amounts which are paid or accrued to the controlled domestic international sales corporation and which shall be deducted by the payor. ~~"Control"~~ For THE purposes of this paragraph, "CONTROL" means direct or indirect ownership or control of fifty per cent or more of the voting stock of the domestic international sales corporation by the payor corporation.

6. Federal income tax refunds received during the taxable year to the extent they were deducted in arriving at Arizona taxable income in a previous year.

7. The amount of net operating loss taken pursuant to section 172 of the internal revenue code.

8. The amount of exploration expenses determined pursuant to section 617 of the internal revenue code to the extent that they exceed seventy-five thousand dollars and to the extent that the election is made to defer those expenses not in excess of seventy-five thousand dollars.

9. Amortization of costs incurred to install pollution control devices and deducted pursuant to the internal revenue code or the amount of deduction for depreciation taken pursuant to the internal revenue code on pollution control devices for which an election is made pursuant to section 43-1129.

10. The amount of depreciation or amortization of costs of child care facilities deducted pursuant to section 167 or 188 of the internal revenue code for which an election is made to amortize pursuant to section 43-1130.

11. Arizona state income tax refunds received, to the extent the amount of the refunds is not already included in Arizona gross income, if a tax benefit was derived by deduction of this amount in a prior year.

12. The amount paid as taxes on property in this state by a qualified defense contractor with respect to which a credit is claimed under section 43-1166.

13. The loss of an insurance company that is exempt under section 43-1201 to the extent that it is included in computing Arizona gross income on a consolidated return pursuant to section 43-947.

14. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1169 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

15. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1169 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1169.

16. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under either section 43-1170 or 43-1170.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

17. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under either section 43-1170 or 43-1170.01 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1170 or 43-1170.01, as applicable.

18. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

1       19. The amount by which a capital loss carryover allowable pursuant to  
2 section 1341(b)(5) of the internal revenue code exceeds the capital loss  
3 carryover allowable pursuant to section 43-1130.01, subsection F.

4       20. Any amount deducted in computing Arizona taxable income as expenses  
5 for installing solar stub outs or electric vehicle recharge outlets in this  
6 state with respect to which a credit is claimed pursuant to section 43-1176.

7       21. Any wage expenses deducted pursuant to the internal revenue code  
8 for which a credit is claimed under section 43-1175 and representing net  
9 increases in qualified employment positions for employment of temporary  
10 assistance for needy families recipients.

11       22. Any amount of expenses that were deducted pursuant to the internal  
12 revenue code and for which a credit is claimed under section 43-1178.

13       23. Any amount deducted for conveying ownership or development rights  
14 of property to an agricultural preservation district under section 48-5702  
15 for which a credit is claimed under section 43-1180.

16       24. The amount of any deduction that is claimed in computing Arizona  
17 gross income and that represents a donation of a school site for which a  
18 credit is claimed under section 43-1181.

19       25. The amount of any deductions that are claimed in computing federal  
20 taxable income representing expenses for which a credit is claimed under  
21 either section 43-1163 or 43-1163.01 or both.

22       26. Any amount deducted in computing Arizona taxable income as expenses  
23 for installing water conservation system plumbing stub outs in this state  
24 with respect to which a credit is claimed pursuant to section 43-1182.

25       27. Any amount deducted pursuant to section 170 of the internal revenue  
26 code representing contributions to a school tuition organization for which a  
27 credit is claimed under section 43-1183.

28       28. THE AMOUNT OF ANY TRADE OR BUSINESS EXPENSE THAT IS DEDUCTED UNDER  
29 SECTION 162 OF THE INTERNAL REVENUE CODE FOR AN EMPLOYEE WHO IS AN  
30 UNAUTHORIZED ALIEN, AS DEFINED IN SECTION 23-211. THIS PARAGRAPH DOES NOT  
31 APPLY IF THE TAXPAYER VERIFIED THE EMPLOYEE PURSUANT TO SECTION 23-214,  
32 SUBSECTION A.